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Ernest T. Johnson

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RACHAEL N. CORDES, CLERK

BY:

Carmetta M. Kenzie

DEPUTY

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SISKIYOU

JOHN H. MASON, et al.,

Plaintiffs

vs.

HARRY M. BEMROD, et al.,

Defendants

No. 14478

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

The above-entitled cause having been filed for the determination of certain rights to the waters of the French Creek stream system in Siskiyou County; said cause having been referred to the Department of Public Works, State of California, as Referee, by an order of the above-entitled Court, dated March 19, 1953, and made under authority of law as conferred by Sections 2000 and 2001 of the Water Code; said order of reference, as amended by order of the Court entered on December 17, 1953, directing said Referee, pursuant to said Section 2001, to investigate any and all of the physical facts involved in said action and to seasonably report to the Court thereon; said Referee having filed its final report as Referee in Court on July 5, 1956; R. E. Richman and Vera M. Richman, Evelyn Wolford, John T. Timmons, LaVerne Dillman and Madelyn Browne having filed exceptions to said report of referee, and the time for filing exceptions thereto having thereafter expired; the State Water

1 Rights Board having succeeded the Division of Water Resources of
2 the Department of Public Works as referee herein by Section 179
3 of the Water Code (added by Statutes of 1956, First Extra
4 Session, Chapter 52, effective July 5, 1956, as Section 189;
5 renumbered as Section 179); all parties to this cause, except-
6 ing Madelyn Browne, William M. Cory, W. H. Munson, R. E. Richman
7 and Vera M. Richman, John T. Timmons and Marion F. Timmons, and
8 LaVerne Dillman, having entered into and filed in Court on
9 July 5, 1956, a written stipulation for judgment; said stipula-
10 tion for judgment providing for settlement and determination of
11 all issues involved in said cause among, and by and between,
12 said signatory parties; said cause having been regularly set
13 for hearing and trial before this Court sitting without a jury,
14 on the 16th day of June, 1958, on which date said cause came on
15 for hearing and trial; said hearing and trial having been
16 regularly continued from said June 16, 1958, to June 23, 1958;
17 evidence to be considered by the Court in this matter including
18 (1) said final report of Referee, in accordance with Section
19 2019 of the Water Code, and (2) document entitled "Amended
20 Stipulation" dated January 28, 1958, and filed in this action
21 on March 6, 1958, being signed by Harvey A. Green and
22 R. E. Richman and Vera M. Richman; and the cause having been
23 submitted, the Court now makes its findings of fact as follows:

FINDINGS OF FACT

1. Said final report of the Referee, as filed on July 5, 1956, is based upon certain substitutions of parties and the joinder of certain additional parties, consistent with ownership in or certain transfers of interests in certain of the lands appurtenant to the waters of the French Creek stream system in Siskiyou County, which substitution and joinder of parties had been authorized by orders of the Court entered herein on February 14, 1955, and on October 31, 1955, and had been made effective by the service of process or by the voluntary appearance of said parties; said substitutions being as follows:

(a) Alphonso J. Fuglistaler for Russell Draper.

(b) John T. Timmons and Marion F. Timmons (and LaVerne Dillman) for Evelyn Wolford.

(c) Madelyn Browne as an individual for Madelyn Browne, Administratrix.

(d) Oscar A. Lolax and Edlean R. Lolax for Melvin Caloia.

(e) H. J. Danielson and Elinore Danielson for Walter Tripp; and said additional persons authorized to be joined as parties, as follows:

(f) Louise Lewis, wife of Robert Lewis.

(g) Ruth A. Proctor, wife of J. D. Proctor.

(h) May Aker, wife of Henry Aker.

(i) Eslie E. Cory, brother of William McKinley Cory.

(j) Kate C. Berthelsen, wife of Valdmarr J. Berthelsen.

(k) Carl F. Tuttle and Robert V. Tuttle, interested in the real property of Carl F. Tuttle, Sr.

(l) Negra Halliday, wife of Warren Halliday.

2. Said Stipulation for Judgment, filed in Court on July 5, 1956, with the Referee's Final Report, contains an express statement that it "constitutes a general appearance in the above entitled

1 action by each party signatory hereto."

2 3. No additional motions have been made for the substitution of
3 parties to correspond to the transfer of interest in land and
4 the right to water of said French Creek stream system appurtenant
5 thereto, although it has been suggested to the Court that certain
6 recent changes in the ownership of property have taken place,
7 particularly with respect to that property described herein as
8 being in the name of John H. Mason and Eleanor A. Mason. However,
9 the Court finds that no prejudice will result to the parties from
10 the failure to make further substitutions, under the provisions
11 of Section 385 of the Code of Civil Procedure.

12 4. The Court incorporates by reference and adopts as its own
13 each and all of the findings of fact as contained in said Final
14 Report of Referee, as filed herein on July 5, 1956, particularly
15 those findings of fact set forth in Chapter III "FINDINGS,"
16 starting at page 13 of said Final Report.

17 5. The "Suggested Solution of the Problem," contained in said
18 Referee's Report and the basis for said Stipulation for Judgment,
19 is found to be fair, and based upon the Referee's findings of
20 fact and opinions.

21 6. The Court finds that said Amended Stipulation entered into
22 by Harvey A. Green and R. E. Richman and Vera M. Richman, filed
23 in this action on March 6, 1958, is a rotation agreement con-
24 sistent with the judgment to be entered herein, fair as between
25 the parties to said Amended Stipulation, and without prejudice to
26 the rights of others.

27 CONCLUSIONS OF LAW

28 And as conclusions of law from the foregoing facts,
29 the Court finds:

30 1. Substitution of parties and the joinder of additional parties
31 have been authorized and made as indicated above. No prejudice

1 will result from not making further substitution of parties.

2 2. All persons named as parties to this cause who voluntarily
3 filed an answer or who signed said Stipulation for Judgment,
4 thereby submitted themselves to the jurisdiction of this Court
5 with respect to this action, regardless of whether said parties
6 had otherwise been served with process in connection with this
7 action.

8 3. All exceptions to said Final Report of the Referee are hereby
9 overruled.

10 4. The Court incorporates by reference and adopts as its own
11 conclusions of law, each and all of the opinions of the Referee
12 as set forth in said Final Report of Referee, and particularly
13 in Chapter IV thereof, entitled "Opinion of the Referee."

14 5. A judgment should be entered in the above-entitled cause
15 adjudicating and determining the rights of the parties in and to
16 the use of the waters of the French Creek stream system, based
17 upon said final report of the Referee, and the within findings
18 of fact and conclusions of law.

19 Judgment is hereby ordered to be entered accordingly.

20 Dated this 14th day of July, 1958.

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22 James M. Alley
23 Judge of the Superior Court
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